

**FILED**

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

MAR 14 2008

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_

DEPUTY CLERK

JERRY RAY ELLISON,  
Individually and as Next Friend of  
C.E., a minor,

Plaintiffs

v.

HOME DEPOT USA, INC.,  
TECHNIBILT, LTD.,  
CARI-ALL PRODUCTS, INC., and  
SOCIETE DE GESTION NORDERON,  
INC.,

Defendants

CIVIL ACTION NO: WO8CA074

**JOINT NOTICE OF REMOVAL**

Defendants Home Depot USA, Inc., Technibilt, Ltd., Cari-All Products, Inc., and Societe de Gestion Norderon, Inc. file this Joint Notice of Removal and would respectfully show this Court the following:

**I. INTRODUCTION**

1. Plaintiffs commenced this action in the 414th Judicial District Court of McLennan County, Texas, where it is now pending as Cause No. 2008-412-5.
2. Defendant Home Depot USA, Inc. was served with a citation in the state court action on February 14, 2008 and filed an answer on February 27, 2008.
3. Defendants Technibilt, Ltd., Cari-All Products, Inc., and Societe de Gestion Norderon, Inc. were served with a citation in the state court action on February 19, 2008. They have not yet filed an answer in the state Court.
4. All defendants consent to the removal of this case to this Court.

## **II. BASIS FOR REMOVAL: DIVERSITY JURISDICTION**

5. The district courts of the United States have original jurisdiction over this action based on diversity of citizenship among parties, in that each of the defendants is now and was at the time the action was commenced, diverse in citizenship from Plaintiffs.

6. Plaintiffs are citizens of the State of Texas.

7. Defendant Home Depot USA, Inc. is a corporation formed under the laws of the State of Delaware with its principal place of business in Atlanta, Georgia. Therefore, Home Depot USA, Inc. is a citizen of the States of Delaware and Georgia.

8. Defendant Technibilt, Ltd. is a corporation formed under the laws of the State of North Carolina with its principal place of business in Newton, North Carolina. Therefore, Technibilt, Ltd. is a citizen of the State of North Carolina.

9. Defendant Cari-All Products, Inc. is a corporation formed under the laws of the Province of Quebec, Canada with its principal place of business in Montreal, Quebec, Canada. Therefore, Cari-All Products, Inc. is a citizen of the nation of Canada.

10. Defendant Societe de Gestion Norderon, Inc. is a corporation formed under the laws of the Province of Quebec, Canada with its principal place of business in Montreal, Quebec, Canada. Therefore, Societe de Gestion Norderon, Inc. is a citizen of the nation of Canada.

11. It is facially apparent from Plaintiff's Original Petition that the amount in controversy exceeds \$75,000.00.

12. Removal is proper because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00.<sup>1</sup>

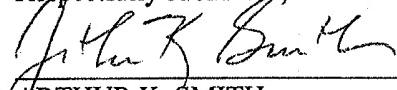
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<sup>1</sup> 28 U.S.C. § 1332(a).

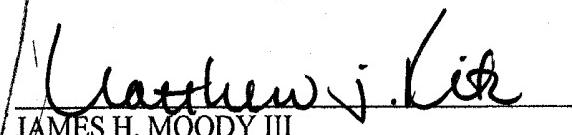
### **III. PROCEDURAL ISSUES**

13. Venue is proper in this district because the state court where the action has been pending is located in this district.<sup>2</sup>
14. Plaintiffs demanded a jury trial in the state court proceeding.
15. A certified copy of the state court's docket sheet, along with copies of all pleadings, process, orders, and other filings in the state court action is contained in the attached appendix.
16. CHF will promptly file a copy of this Notice of Removal with the McLennan County District Clerk.

Respectfully submitted,

  
\_\_\_\_\_  
ARTHUR K. SMITH  
State Bar No. 18534100  
LAW OFFICES OF ARTHUR K. SMITH, P.C.  
507 Prestige Circle  
Allen, Texas 75002  
(469) 519-2500 (phone) / (469) 519-2555 (fax)

**ATTORNEY FOR DEFENDANT  
HOME DEPOT USA, INC.**

  
\_\_\_\_\_  
JAMES H. MOODY III  
State Bar No. 03820050  
MATTHEW J. KITA  
State Bar No. 24050883  
QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 871-2100 (phone) / (214) 871-2111 (fax)

**ATTORNEYS FOR DEFENDANTS  
TECHNIBILT, LTD.,  
CARI-ALL PRODUCTS, INC., and  
SOCIETE DE GESTION NORDERON, INC.**

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<sup>2</sup> 28 U.S.C. § 1441(a).

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the forgoing document was served on all counsel of record in accordance with the Federal Rules of Civil Procedure on March 13, 2008.

  
\_\_\_\_\_  
MATTHEW J. KITA



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I.** (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**SUPPLEMENT TO CIVIL COVER SHEET**

Attorneys for Defendants:

ARTHUR K. SMITH  
State Bar No. 18534100  
LAW OFFICES OF ARTHUR K. SMITH, P.C.  
507 Prestige Circle  
Allen, Texas 75002  
(469) 519-2500 (phone) / (469) 519-2555 (fax)

**ATTORNEY FOR DEFENDANT  
HOME DEPOT USA, INC.**

JAMES H. MOODY III  
State Bar No. 03820050  
MATTHEW J. KITA  
State Bar No. 24050883  
QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 871-2100 (phone) / (214) 871-2111 (fax)

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TECHNIBILT, LTD.,  
CARI-ALL PRODUCTS, INC., and  
SOCIETE DE GESTION NORDERON,  
INC.**

ORIGINAL

422793

RECEIPT FOR PAYMENT  
UNITED STATES DISTRICT COURT  
for the  
WESTERN DISTRICT OF TEXAS

at

Waco, Tx

RECEIVED FROM

Quilling, Delander, Chammiskey  
& Lounds, P.C.

2021 Bryan St #1800  
Dallas, Tx 75201

Fund	ACCOUNT	AMOUNT
6855XX	510000	190.00
604700	086900	60.00
	086400	100.00
508800	TOTAL	350.00
085000	Case Number or Other Reference	
086900	W-08-CA-074	
322340		
322350		
322360		
143500		
322380		
322386		
121000		
129900		
504100		
613300		
510000		
510100		

\$ Checks and drafts are accepted subject to collection and full credit will only be given when the check or draft has been accepted by the financial institution on which it was drawn.

DATE      3-14-08      Cash      Check      M.O.      Credit

DEPUTY CLERK

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Notice of Removal  
Jerry Ellison  
vs.  
Home Depot USA, Inc et al

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